APPENDIX A

Supreme Court of Ohio

Nos. 2007-2310, 2007-2311

[Filed February 4, 2009]

THE STATE OF OHIO, APPELLANT,	)
V.	)
JONES, APPELLEE.	)
THE STATE OF OHIO, APPELLANT,	)
V.	)
SKROPITS, APPELLEE.	)

Criminal law — Extraterritorial traffic stop — A law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution.

(Nos. 2007-2310, 2007-2311 — Submitted October 14, 2008 — Decided February 4, 2009.)

APPEAL from the Court of Appeals for Stark County, No. 2007-CA-00139, 2007-Ohio-5818.

APPEAL from the Court of Appeals for Stark County, No. 2007-CA-00098, 2007-Ohio-5817.

SYLLABUS OF THE COURT

A law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution. (*State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997, followed.)

O'CONNOR, J.

{¶ 1} Today we determine whether an officer's extraterritorial traffic stop in contravention of R.C. 2935.03 also violates the Fourth Amendment of the United States Constitution, when the officer has probable cause to initiate the stop because he personally observed a traffic violation. For the reasons that follow, we hold that it does not.

Relevant Background

{¶ 2} On the night of September 27, 2006, Sergeant Mitchell Hershberger of the East Canton Police Department responded to an accident at 113 East

Nassau Street in East Canton. A witness told Sergeant Hershberger that a red Ford Ranger had collided with a full-size van. The drivers had exchanged words and afterwards left the scene, with the Ford heading west on Nassau Street.

{¶ 3} Sergeant Hershberger noticed some debris left behind from the Ford. Approximately ten minutes later, he received another dispatch advising him that the Ford was hiding in the area of the former Coyote Restaurant, located about a half mile from East Canton. Hershberger went to the restaurant but did not find the Ford. Believing that the vehicle could be headed towards Canton, Sergeant Hershberger next drove out to Trump Road, about another half mile away.

{¶ 4} When Sergeant Hershberger arrived at Trump Road, he began heading back east, checking various businesses for the Ford. While he was checking a car wash, a motorist told Sergeant Hershberger that a vehicle heading west without any headlights almost hit him.

{¶ 5} Sergeant Hershberger got back on the road, continuing to go east towards East Canton, and eventually saw the Ford. Upon finding the truck, he observed that its front end was smashed and its headlights were not on. Sergeant Hershberger stopped the Ford, which appellee Adam Jones was driving, because the vehicle did not have its headlights on.

{¶ 6} After he had pulled over the vehicle, Sergeant Hershberger asked Jones and his passenger, appellee Shawn Skropits, whether they had any weapons in the truck, and appellees said that they did. In addition,

Jones told Sergeant Hershberger that he did not have a driver's license, which was why he had left the accident scene.

{¶ 7} Sergeant Hershberger arrested appellees and charged each of them with one count of carrying a concealed weapon and one count of unlawful possession of dangerous ordnance. Appellees moved to suppress the evidence obtained during the search, arguing that because the stop violated R.C. 2935.03, which governs the territorial jurisdiction in which a police officer may make an arrest, it also violated the Fourth Amendment. After a hearing on the motion, the trial court denied appellees' requests.

{¶ 8} Following the denial of their motions to suppress, appellees pleaded no contest to the charges, were found guilty by the trial court, and were sentenced to community control.

{¶ 9} Appellees appealed the trial court's judgment to the Fifth District Court of Appeals. The court of appeals reversed in a divided opinion, holding that there was neither reasonable suspicion nor probable cause to support Sergeant Hershberger's stop. The dissent, however, would have affirmed the trial court's denial of the motion to suppress based on *State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997.

{¶ 10} The state appealed the reversals, and we exercised jurisdiction and consolidated the cases. *State v. Skropits*, 117 Ohio St.3d 1450, 2008-Ohio-1427, 883 N.E.2d 1075 (cause consolidated); *State v. Jones*, 117 Ohio St.3d 1438, 2008-Ohio-1279, 883 N.E.2d 456 (appeal accepted and cause consolidated); *State v.*

Skropits, 117 Ohio St.3d 1423, 2008-Ohio-969, 882 N.E.2d 444 (appeal accepted).

Analysis

{¶ 11} Our decision in *Weideman* and the United States Supreme Court's recent decision in *Virginia v. Moore* (2008), ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559, are dispositive of this matter. Read together, *Weideman* and *Moore* stand for the principle that a law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559; *Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997, syllabus.

{¶ 12} We held in *Weideman* that "[w]here a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment." 94 Ohio St.3d 501, 764 N.E.2d 997, syllabus.

{¶ 13} The facts of *Weideman* closely mirror those of the present case. In *Weideman*, a police officer outside of his jurisdiction stopped a vehicle that he had observed traveling left of center. Id. at 502, 764 N.E.2d 997. The trial court denied Weideman's motion to suppress, but the court of appeals reversed, reasoning that because the officer had been outside of his jurisdiction, the arrest was unlawful under R.C.

2935.03(A)(1) and per se unreasonable under the Fourth Amendment. Id. at 503, 764 N.E.2d 997.

{¶ 14} We reversed the appellate court's judgment. Specifically, we held that "[t]he state's interest in protecting the public from a person who drives an automobile in a manner that endangers other drivers outweighs [the defendant's] right to drive unhindered." Weideman, 94 Ohio St.3d at 506, 764 N.E.2d 997. But because the stop was not per se unreasonable, it follows that a court could find that an extraterritorial stop is unreasonable based on the unique facts and circumstances of a particular case.[1]

{¶ 15} The United States Supreme Court's decision in *Moore*, however, removed any room for finding that a violation of a state statute, such as R.C. 2935.03, in and of itself, could give rise to a Fourth Amendment violation and result in the suppression of evidence.[2] Officers stopped and arrested Moore for driving on a suspended license. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559. Under Virginia law, the officers should have issued Moore a summons rather than arresting him because driving on a suspended license was generally not an arrestable offense. Id. at ___, 128 S.Ct. at 1602, 170 L.Ed.2d 559. Following Moore's arrest, the officers found 16 grams of crack cocaine and

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[1] In this respect, Justice Cook's concurring opinion was prescient in noting that the *Weideman* majority's Fourth Amendment balancing analysis was unnecessary when the stop is based upon probable cause. 94 Ohio St.3d at 507, 764 N.E.2d 997.

[2] We note that the Fifth District issued its opinions in the cases before us prior to the release of the Supreme Court's decision in *Moore*.

$516 on his person. Id. at ___, 128 S.Ct. at 1601, 170 L.Ed.2d 559.

{¶ 16} Moore moved to suppress the evidence on Fourth Amendment grounds. Id. at ___, 128 S.Ct. at 1602, 170 L.Ed.2d 559. The trial court denied the motion, but the Supreme Court of Virginia ultimately reversed the ruling. Id. The United States Supreme Court then reversed that judgment, reinstating the trial court's denial of the motion to suppress. Id. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559

{¶ 17} *Moore* explained that "when an officer has probable cause to believe a person committed *even a minor crime* in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." (Emphasis added.) Id. at ___ U.S. ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559. The court further acknowledged that although states could legislate a higher standard on searches and seizures, those laws do not alter the requirements of the Fourth Amendment. Id.

{¶ 18} Applying Virginia's law to the facts of the case, the Supreme Court observed that although the statute provided a greater degree of protection than that afforded under the Fourth Amendment, it did not provide a remedy of suppression for a violation. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1606, 170 L.Ed.2d 559. Thus, because of the need for consistency and bright-line standards when applying the Fourth Amendment, the court concluded that "it is not the province of the Fourth Amendment to enforce state law." Id. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559.

{¶ 19} In the case before us, it is undisputed that there was a violation of R.C. 2935.03(A)(1). However, the majority of the appellate court did not sufficiently appreciate the importance of the fact that Sergeant Hershberger personally observed Jones driving without headlights in the dark in clear contravention of several Ohio statutes.[3] This conduct constituted a traffic violation, thereby giving Sergeant Hershberger probable cause to initiate the stop because he had personally observed the violation. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 11-12, 665 N.E.2d 1091 ("where an officer has * * * probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid").[4]

{¶ 20} The appellate court's focus on the fact that Sergeant Hershberger was outside his jurisdiction and on his reasons for being there is irrelevant to the Fourth Amendment analysis. The sole focus of the

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[3] See, e.g., R.C. 4513.03 (lights required between sunset and sunrise, during unfavorable weather conditions, or any other time when there is insufficient light, 4513.04 (every motor vehicle required to be equipped with two operable headlights, 4513.14 (headlights must be on during the times set forth in 4513.03), and 4513.15 (headlights required sufficient to reveal persons, vehicles, or substantial objects at a safe distance).

[4] Our holding today does not modify well-settled law that reasonable suspicion is sufficient to justify an investigatory stop. See *U.S. v. Lopez Soto* (C.A.9, 2000), 205 F.3d 1101, 1104. We discuss probable cause only to highlight the fact that an extraterritorial stop for a traffic violation based on probable cause is reasonable. *Whren v. United States* (1996), 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89. Similarly, when the extraterritorial stop is based on reasonable suspicion rather than probable cause, *Weideman* still controls.

inquiry should have been on the stop itself because the violation of R.C. 2935.03 does not rise to the level of a constitutional violation for the reasons expressed in *Moore*. See also *Rose v. Mulberry, Arkansas* (C.A.8, 2008), 533 F.3d 678, 679-680 ("the determinative issue is whether an arrest by a city police officer outside of his jurisdiction but made with probable cause violates the Fourth Amendment as a matter of law. * * * [The officer] lacked the authority under Arkansas law to make traffic stops and arrests on the Interstate. Nevertheless, because he had probable cause to arrest for the offense * * * no Fourth Amendment violation occurred").

{¶ 21} Although it could have done so,[5] the General Assembly chose not to provide any remedy for a violation of R.C. 2935.03(A)(1). Thus, pursuant to *Moore*, we are not in the position to rectify this possible legislative oversight by elevating a violation of R.C. 2935.03 to a Fourth Amendment violation and imposing the exclusionary rule, because the stop in this case was constitutionally sound. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559.

{¶ 22} Likewise, we must reject appellees' entreaties that we develop a balancing test for determining when to impose a suitable sanction for a

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[5] For example, the General Assembly passed the speedy-trial statutes, R.C. 2945.71 et seq., to protect a defendant's Sixth Amendment right to a speedy trial. *State ex rel. Micheel v. Vamos* (1945), 144 Ohio St. 628, 631, 30 O.O. 225, 60 N.E.2d 305. However, to guarantee that the right to a speedy trial is fully effectuated, the General Assembly also enacted R.C. 2945.73, which explicitly provides for dismissal of a case when the speedy-trial laws are violated.

law-enforcement officer's violation of the territorial limits on arrest powers. Generally, establishing a remedy for a violation of a statute remains in the province of the General Assembly, not the Ohio Supreme Court. *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188, ¶ 37. The Fourth Amendment simply does not require this result. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559.

Conclusion

{¶ 23} We share the concerns that appellees express about law-enforcement officers who violate the territorial requirements of R.C. 2935.03. However, as discussed above, the remedy for a violation of the statute falls within the realm of the legislative branch. The Fourth Amendment does not provide the remedy that appellees seek in this case.

{¶ 24} Accordingly, we reverse the judgment of the court of appeals and reinstate the trial court's judgment.

Judgment reversed.

MOYER, C.J., and LUNDBERG STRATTON, LANZINGER, and CUPP, JJ., CONCUR.

PFEIFER and O'DONNELL, JJ., concur separately.

O'DONNELL, J., concurring.

{¶ 25} The sole issue before the court is whether the exclusionary rule should be applied to suppress

evidence obtained as a result of a police officer's extraterritorial traffic stop. The majority reverses the judgment of the Fifth District Court of Appeals and holds that the trial court properly denied Jones's and Skropits's motions to suppress the evidence. I concur with that result based on the following three-part analysis.

(1) ***Whether an officer's extraterritorial stop in violation of R.C. 2935.03 requires exclusion of evidence.***

{¶ 26} As the court of appeals stated in its decision, "Revised Code § 2935.03(A)(1) governs a police officer's jurisdiction to arrest. It is undisputed in this case that the arresting officer was outside of his territorial jurisdiction when he made the arrest as the subject vehicle was located outside of the East Canton border." *State v. Jones*, Stark App. No. 2007-CA-00139, 2007-Ohio-5818, 2007 WL 3171206, ¶ 16. Thus, it may be assumed that the officer violated R.C. 2935.03, and the question becomes whether the exclusionary rule applies.

{¶ 27} In *Kettering v. Hollen* (1980), 64 Ohio St.2d 232, 18 O.O.3d 435, 416 N.E.2d 598, this court unanimously answered the question in the negative. There, the court assumed that a Kettering police officer violated R.C. 2935.03 by stopping a car in the city of Dayton for erratic driving. Id. at 234, 18 O.O.3d 435, 416 N.E.2d 598. The issue was whether the statutory violation required application of the exclusionary rule. Id. Citing numerous cases in support, this court explained:

{¶ 28} "It is clear * * * that the exclusionary rule will not ordinarily be applied to evidence which is the product of police conduct violative of state law but not violative of constitutional rights.

{¶ 29} "We turn now to examine the facts in this case to determine whether a constitutional violation occurred. We find none. At the outset, it is readily apparent that [the officer] had probable cause to arrest the defendant after observing his erratic driving behavior." Id. at 234-235, 18 O.O.3d 435, 416 N.E.2d 598.

{¶ 30} Thus, a violation of R.C. 2935.03 does not justify exclusion unless the violation also rises to a constitutional violation.

(2) ***Whether an extraterritorial stop in violation of R.C. 2935.03 is a per se violation of the Fourth Amendment, thus requiring exclusion of evidence.***

{¶ 31} In *State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997, a Ravenna police officer left his territory to conduct a routine errand, and while outside of the city limits, he observed a driver traveling left of center. Id. at 502, 764 N.E.2d 997. In violation of R.C. 2935.03, the officer stopped the vehicle, conducted a sobriety test, and detained the driver for drunk driving until a state trooper arrived to make the arrest. Id. at 502-503, 764 N.E.2d 997. This court eventually accepted review of the following conflict question certified by the Eleventh District Court of Appeals: " 'Whether a stop and detention of a motorist by a police officer, who is *beyond* his or her jurisdictional limits, for an offense observed and

committed *outside* the officer's jurisdiction automatically constitutes a *per se* unreasonable seizure under the Fourth Amendment, thereby triggering the mandatory application of the exclusionary rule to suppress all evidence flowing from the stop.' " (Emphasis sic.) Id. at 504, 764 N.E.2d 997.

{¶ 32} This court answered in the negative: "Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop." 94 Ohio St.3d at 506, 764 N.E.2d 997. Rather, the only issue is whether the officer had probable cause, and "[t]he trial court did not err when it concluded that defendant's manner of operating her motor vehicle gave [the officer] sufficient probable cause to make the stop." Id.

{¶ 33} Our conclusion in *Weideman* is consistent with the United States Supreme Court's recent decision in *Virginia v. Moore* (2008), ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559. There, a police officer stopped and arrested Moore on the belief that he was driving on a suspended license, but Virginia law provided that an officer could not arrest a driver for this offense. Id. at ___, 128 S.Ct. at 1602, 170 L.Ed.2d 559. The issue on appeal to the Supreme Court was whether the officer's violation of the state statute necessarily resulted in a violation of the Fourth Amendment. The court held that it did not: "[W]hen an officer has probable cause to believe a person committed even a minor crime in his presence, the

balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." Id. at ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559.

{¶ 34} Thus, in this case, the officer's extraterritorial stop and arrest of Jones and Skropits in violation R.C. 2935.03 is not a per se violation of the Fourth Amendment requiring application of the exclusionary rule. The Fourth Amendment requires exclusion only when the officer lacked probable cause to make the stop; the fact that the stop was extraterritorial is irrelevant.

(3) *Whether the officer had probable cause to stop Jones and Skropits.*

{¶ 35} Here, the police officer testified at the suppression hearing that he had personally observed that the headlights on Jones and Skropits's truck were nonfunctional, in violation of several sections in R.C. Chapter 4513. When an officer personally observes a traffic violation, the officer has probable cause to initiate a traffic stop. *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698.

{¶ 36} It could be argued that the broken headlights were mere pretext and that the real reason for stopping Jones and Skropits was the officer's subjective belief that they were involved in a "hit-skip" accident in East Canton, a violation that the officer did not observe. The United States Supreme Court, however, has consistently rejected subjective analyses and other claims of pretext in the context of probable cause. See *Whren v. United States* (1996), 517 U.S. 806, 813-814, 116 S.Ct. 1769, 135 L.Ed.2d 89, quoting *United States v. Robinson* (1973), 414 U.S. 218, 221, 94

S.Ct. 467, 38 L.Ed.2d 427, fn. 1 ("we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers * * *. [A] traffic-violation arrest * * * [will] not be rendered invalid by the fact that it was 'a mere pretext for a narcotics search' "); see also *Arkansas v. Sullivan* (2001), 532 U.S. 769, 772, 121 S.Ct. 1876, 149 L.Ed.2d 994, quoting *Whren*, 517 U.S. at 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (" 'subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis' "); *Bond v. United States* (2000), 529 U.S. 334, 338, 120 S.Ct. 1462, 146 L.Ed.2d 365, fn. 2 ("the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment").

{¶ 37} Accordingly, because the arresting officer personally observed the traffic violation, he had probable cause to stop Jones and Skropits. And because there is no constitutional violation, there is no basis for applying the exclusionary rule.

{¶ 38} I respectfully concur.

PFEIFER, J., concurs in the foregoing opinion.

John D. Ferrero, Stark County Prosecuting Attorney, and Ronald Mark Caldwell, Assistant Prosecuting Attorney, for appellant.

Tammi R. Johnson, Stark County Public Defender, and Steven A. Reisch, Assistant Public Defender, for appellee Adam David Jones.

George Urban, for appellee Shawn Michael Skropits.

Richard Cordray, Attorney General, Benjamin Mizer, Solicitor General, and Todd Nist, Assistant Solicitor, urging reversal for amicus curiae, Attorney General of Ohio.

APPENDIX B

COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, STARK COUNTY

Case No. 2007 CA 00098

[Date of Judgment Entry October 29, 2007]

STATE OF OHIO,
Plaintiff-Appellee

-vs-

SHAWN MICHAEL SKROPITS,
Defendant-Appellant

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 2006 CR 01655(A).

JUDGES: Hon. Sheila G. Farmer, P. J., Hon. John W. Wise, J., Hon. Julie A. Edwards, J. Farmer, P. J., concurs. Edwards, J., dissents.

OPINION

Wise, J.

[¶1] Defendant-appellant Shawn Skropits appeals his sentence and conviction entered in the Stark County Court of Common Pleas on one count of

Carrying a Concealed Weapon, a felony of the fourth degree, and one count of Unlawful Possession of a Dangerous Ordnance, a felony of the fifth degree.

[¶2] Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

On September 27, 2006, an East Canton Police Officer Mitchell Hershberger responded to a call regarding an automobile accident. (Supp. T. at 9). When he arrived at the location of the accident, 113 East Nassau Street in East Canton, neither vehicle was still at the scene. Officer Hershberger talked with a witness who worked at the nearby gas station, and was told that a small red Ford Ranger had struck the rear end of a full-size van. (Supp. T. at 10). The driver of the van got out and exchanged words with the driver of the Ford Ranger. (Supp. T. at 10). The driver of the van then got back into his vehicle, made a U-turn, and left the scene. (Supp. T. at 10). The Ford Ranger also left the scene, proceeding westbound on Nassau Street. (Supp. T. at 10)

[¶3] At the scene the officer found some debris which appeared to be from a Ford Ranger. (Supp. T. at 11). Approximately ten minutes later, after the officer had left the scene and had returned to the Town Hall where he was also bailiffing, the officer received a dispatch advising that a red Ford Ranger with a smashed front and headlights out was "hiding" in the area of the Old Coyote Restaurant, which is located in Osnaburg Township approximately one-half mile from East Canton. (Supp. T. at 12-13). The officer proceeded to the Old Coyote Restaurant, however there was no sign of the vehicle as reported. (Supp. T. at 12-13, 20,

26-27). The officer continued to search for the vehicle, searching a nearby trailer park without success. (Supp. T. at 28). The officer next traveled westbound approximately another one-half mile on West Nassau Street/Lincolnway out to Trump Road to check the businesses located there, and then returned "doing a sweep back towards town." (Supp. T. at 13).

[¶4] The Officer stopped to check a car wash parking lot, in Canton Township, when another motorist pulled up to him and complained of a vehicle traveling westbound, which was driving without headlights, and which had nearly struck his vehicle. (Supp. T. at 14-15, 20). The Officer drove back east until he encountered a Ford Ranger pick-up truck. (Supp. T. at 15). The Officer then turned around and initiated a traffic stop. (Supp. T. at 15). The front end of the truck was damaged and the headlights were not on. (Supp. T. at 16). Adam Jones was driving the vehicle and Shawn Skropits was the only passenger. (Supp. T. at 17-18).

[¶5] Almost immediately following the approach and encounter with the occupants of the vehicle, both individuals indicated that there were guns in the vehicle. Both Shawn Skropits and Adam Jones were subsequently arrested

[¶6] On November 2, 2006, Appellants Shawn Skropits and Adam Jones were each indicted on one count of Carrying a Concealed Weapon, a fourth degree felony, and one count of Unlawful Possession of a Dangerous Ordnance, a fifth degree felony. The indictments also charged that each were either the principal offender or they aided and abetted each other. The men were charged with having four

handguns and a sawed-off shotgun, along with ammunition for the guns, in the vehicle.

[¶7] On January 17, 2007, Appellant Shawn Skropits filed a Motion to Dismiss and/or Suppress.

[¶8] On January 22, 2007, Adam Jones filed his Motion to Dismiss and/or Suppress.

[¶9] On January 30, 2007, the trial court held a Suppression Hearing.

[¶10] At said Suppression hearing, the Officer stated that he was not in "hot pursuit" of any vehicle during this investigation (Supp. T. at 25, 32). He also stated that he did not contact another police department for assistance before he initiated the traffic stop. (Supp. T. at 29-30). The Officer stated that he was investigating a "hit skip accident." (Supp. T. at 20). Later he stated that he suspected the suspect of littering by leaving part of the vehicle in the roadway. (Supp. T. at 41). Finally, the Officer admitted that, according to the only witness to the accident, the drivers of the two vehicles spoke briefly and the van left the scene first. (Supp. T. at 41).

[¶11] By Judgment Entry filed February 2, 2007, the trial court overruled both Motions to Suppress.

[¶12] After the suppression motions were overruled, Appellant Skropits changed his former plea of not guilty to a plea of no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing, the trial court found Appellant Skropits guilty as charged and ordered a probation investigation report. Upon the completion of

this report, the trial court imposed a community control sanction for a period of two years.

[¶13] Appellant Skropits thereafter filed the instant appeal to challenge the court's suppression ruling, assigning the following error for review:

ASSIGNMENT OF ERROR

[¶14] "I. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION TO SUPPRESS."

I.

[¶15] In his sole assignment of error, Appellant argues that the police had insufficient reasonable suspicion or probable cause to support their initial stop of the vehicle in which he was a passenger. We agree.

[¶16] Revised Code §2935.03(A)(1) governs a police officer's jurisdiction to arrest. It is undisputed in this case that the arresting officer was outside of his territorial jurisdiction when he made the arrest as the subject vehicle was located outside of the East Canton border. When determining whether an extraterritorial stop triggers the exclusionary rule, a court must determine, under the totality of the circumstances, whether the statutory violation rises to the level of a constitutional violation, i.e., whether the police officer had reasonable suspicion to stop and sufficient probable cause to arrest appellant. *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997, 2002 Ohio 1484.

[¶17] If the totality of the facts and circumstances demonstrate that police had a reasonable, articulable

suspicion of criminal conduct sufficient to warrant the investigative stop and detention, and probable cause to arrest, then while that extraterritorial seizure may violate R.C. §2935.03, it does not rise to the level of a constitutional violation requiring suppression of all evidence derived from the stop. Id.

[¶18] The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *." The amendment has been extended to seizures of passengers in traffic stops under the rationale that the amendment "protects people, not places." *Katz v. United States* (1967), 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576. Using the reasonableness requirement of the amendment, the United States Supreme Court has held that a seizure must be reasonable both at its inception and throughout its duration. See *Terry v. Ohio* (1968), 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889.

[¶19] An investigatory stop is permissible if a law enforcement officer has a reasonable suspicion, based on specific and articulable facts, that the individual to be stopped may be involved in criminal activity. *Terry v. Ohio* (1968), 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L. Ed. 2d 889. When determining whether or not an investigative traffic stop is supported by a reasonable, articulable suspicion of criminal activity, the stop must be viewed in light of the totality of circumstances surrounding the stop. *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph one of the syllabus, cert. denied (1988), 488 U.S. 910, 109 S. Ct. 264, 102 L. Ed. 2d 252.

[¶20] Ohio Courts have held that a passenger as well as the driver of a vehicle has standing to challenge the lawfulness of a traffic stop. *State v. Amburgy* (1997), 122 Ohio App.3d 277, 282-83, 701 N.E.2d 728. The United States Supreme Court recently reached the same conclusion and found that "[a] traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver ... and the police activity that normally amounts to intrusion on the privacy and personal security does not normally (and does not here) distinguish between passenger and driver." *Brendlin v. California* (2007), 127 S.Ct. 2400, 168 L.E.2d 132.

[¶21] Upon review of the facts in the case sub judice, we do not find that the officer had reasonable suspicion, based on specific and articulable facts, that the driver of the vehicle or his passenger may have been involved in criminal activity. The dispatch call received by Officer Hershberger was for a traffic accident. Upon driving to the scene and finding that the vehicles were no longer there, he interviewed a witness who informed him that the two drivers involved in the accident spoke to one another and that both left the scene thereafter. Based on this information, Officer Hershberger had no reason to believe that a crime had occurred. Even after he received the second call about the red Ford Ranger "hiding" near the Coyote Restaurant, which was outside his jurisdiction, he still had no reason to believe that a crime had been committed. He did not drive out of his jurisdiction in "hot pursuit". We further find that the officer did not have jurisdiction to pull over the vehicle in question based on the complaint he received while outside of his jurisdiction,

from another motorist, that a vehicle driving without its headlights on had almost hit him.

[¶22] Accordingly, we find the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice.

[¶23] We therefore find that Officer Hershberger's action in making an extraterritorial stop of the vehicle in the case sub judice violates the reasonableness requirement of the Fourth Amendment. Officer Snow's statutory violation in this case therefore requires suppression of all evidence flowing from the stop.

[¶24] Accordingly, we hereby sustain Appellant's assignment of error.

[¶25] For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and this matter is remanded for further proceedings consistent with the law and this opinion.

By: Wise, J.

Farmer, P. J., concurs.

Edwards, J., dissents.

JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and remanded for further proceedings consistent with this opinion.

Costs assessed to appellee.

DISSENT

EDWARDS, J., DISSENTING OPINION

[¶26] I respectfully dissent from the majority's analysis and disposition of appellant's sole assignment of error.

[¶27] The majority, in the case sub judice, finds that the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice. The majority further finds that the officer's action in stopping the vehicle violated the reasonableness requirement of the Fourth Amendment.

[¶28] The Ohio Supreme Court, in the syllabus of *State v. Weideman,* 94 Ohio St.3d 501, 2002 Ohio 1484, 764 N.E.2d 997, held as follows:

[¶29] "Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop."

[¶30] At the suppression hearing in this matter, Officer Hershberger testified that he pulled over the vehicle because it had no headlights on. Supp. T. at 40.

There also was testimony adduced at the hearing that it was dark outside at that time.

[¶31] Based on *Weideman,* supra., I would find that the stop of the vehicle by the officer in this matter was not unreasonable per se under the Fourth Amendment and that the officer's statutory violation does not require suppression of all evidence flowing from the stop. As noted by appellee, the officer personally observing appellant driving in the dark without headlights and therefore had reasonable suspicion to make the traffic stop.

[¶32] Based on the foregoing, I would find that the trial court did not err in denying the Motion to Suppress in this case.

Judge Julie A. Edwards

APPENDIX C

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure
Chapter 2935. Arrest, Citation, and
Disposition Alternatives
Arrest

2935.03 Arrest and detention until warrant can be obtained

(A)(1) A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint township police district, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, veterans' home police officer appointed under section 5907.02 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of

transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended, shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(2) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer's, state fire marshal law enforcement officer's, or individual's territorial jurisdiction, a law of this state.

(3) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (D)(1)(a) of section 101.311 of the

Revised Code or while providing security pursuant to division (D)(1)(f) of section 101.311 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(B)(1) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a protection order as defined in section 2919.27 of the Revised Code, the offense of menacing by stalking as defined in section 2903.211 of the Revised Code, the offense of aggravated trespass as defined in section 2911.211 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a peace officer described in division (A) of this section may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.

(2) For purposes of division (B)(1) of this section, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation:

(a) A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass;

(b) A written statement by the administrator of the interstate compact on mental health appointed under section 5119.51 of the Revised Code alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code;

(c) A written statement by the administrator of any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or

confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code.

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

(i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

(b) If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of this section until a warrant can be obtained.

If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that family or household members have committed the offense against each other, it is the preferred course of action in this state that the officer, pursuant to division (B)(1) of this section, arrest and detain until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action in this state regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but, pursuant to division (B)(1) of this section, the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not

have reasonable cause to believe is the primary physical aggressor.

(c) If a peace officer described in division (A) of this section does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of domestic violence or the offense of violating a protection order when it is the preferred course of action in this state pursuant to division (B)(3)(b) of this section that the officer arrest that person, the officer shall articulate in the written report of the incident required by section 2935.032 of the Revised Code a clear statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained.

(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

(i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;

(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other

person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

(e)(i) A peace officer described in division (A) of this section shall not require, as a prerequisite to arresting or charging a person who has committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense.

(ii) If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order and if the victim of the offense does not cooperate with the involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or the filing of the charges, informs the involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the

incident that resulted in the arrest or filing of the charges and of all witnesses to that incident.

(f) In determining pursuant to divisions (B)(3)(a) to (g) of this section whether to arrest a person pursuant to division (B)(1) of this section, a peace officer described in division (A) of this section shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to the person's arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility.

(g) If a peace officer described in division (A) of this section intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.

(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment

and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable:

(i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded;

(ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

(4) If, in the circumstances described in divisions (B)(3)(a) to (g) of this section, a peace officer described in division (A) of this section arrests and detains a person pursuant to division (B)(1) of this section, or if, pursuant to division (B)(3)(h) of this section, a peace officer described in division (A) of this section seizes a deadly weapon, the officer, to the extent described in and in accordance with section 9.86 or 2744.03 of the Revised Code, is immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure.

(C) When there is reasonable ground to believe that a violation of division (A)(1), (2), (3), (4), or (5) of section 4506.15 or a violation of section 4511.19 of the Revised Code has been committed by a person operating a motor vehicle subject to regulation by the public

utilities commission of Ohio under Title XLIX of the Revised Code, a peace officer with authority to enforce that provision of law may stop or detain the person whom the officer has reasonable cause to believe was operating the motor vehicle in violation of the division or section and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A) of this section, township constable, police officer of a township or joint township police district, state university law enforcement officer appointed under section 3345.04 of the Revised Code, peace officer of the department of natural resources, individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code, the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, or an assistant house sergeant at arms is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a

regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

(2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(E) In addition to the authority granted under division (A) or (B) of this section:

(1) A sheriff or deputy sheriff may arrest and detain, until a warrant can be obtained, any person found violating section 4503.11, 4503.21, or 4549.01, sections 4549.08 to 4549.12, section 4549.62, or Chapter 4511. or 4513. of the Revised Code on the portion of any street or highway that is located immediately adjacent to the boundaries of the county in which the sheriff or deputy sheriff is elected or appointed.

(2) A member of the police force of a township police district created under section 505.48 of the Revised Code, a member of the police force of a joint township police district created under section 505.481 of the Revised Code, or a township constable appointed in accordance with section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training commission under section 109.75 of the Revised Code, may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the township police district or joint township police district, in the case of a member of a township police district or joint township police district police force, or the unincorporated territory of the township, in the case of a township constable. However, if the population of the township that created the township police district served by the member's police force, or the townships that created the joint township police district served by the member's police force, or the township that is served by the township constable, is sixty thousand or less, the member of the township police district or joint police district police force or the

township constable may not make an arrest under division (E)(2) of this section on a state highway that is included as part of the interstate system.

(3) A police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed.

(4) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the lands and waters that constitute the territorial jurisdiction of the peace officer or state fire marshal law enforcement officer.

(F)(1) A department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person found committing on the premises of any institution under the jurisdiction of

the particular department a misdemeanor under a law of the state.

A department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code and who is found committing on the premises of any institution under the jurisdiction of the particular department a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution.

(2)(a) If a department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer finds any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code committing a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution, or if there is reasonable ground to believe that a violation of section 2921.34 of the Revised Code has been committed that involves an escape from the premises of an institution under the jurisdiction of the department of mental health or the department of mental retardation and developmental disabilities and if a department of mental health special police officer or a department of mental

retardation and developmental disabilities special police officer has reasonable cause to believe that a particular person who has been hospitalized, institutionalized, or confined in the institution pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain that person for that violation of section 2921.34 of the Revised Code, until a warrant can be obtained, if both of the following apply:

(i) The pursuit takes place without unreasonable delay after the offense is committed;

(ii) The pursuit is initiated within the premises of the institution from which the violation of section 2921.34 of the Revised Code occurred.

(b) For purposes of division (F)(2)(a) of this section, the execution of a written statement by the administrator of the institution in which a person had been hospitalized, institutionalized, or confined pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the premises of the institution in violation of section 2921.34 of the Revised Code constitutes reasonable ground to believe that the violation was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation.

(G) As used in this section:

(1) A "department of mental health special police officer" means a special police officer of the department of mental health designated under section 5119.14 of the Revised Code who is certified by the Ohio peace officer training commission under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(2) A "department of mental retardation and developmental disabilities special police officer" means a special police officer of the department of mental retardation and developmental disabilities designated under section 5123.13 of the Revised Code who is certified by the Ohio peace officer training council under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(3) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(4) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(5) "Street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(6) "Interstate system" has the same meaning as in section 5516.01 of the Revised Code.

(7) "Peace officer of the department of natural resources" means an employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised

Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13 of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code.

(8) "Portion of any street or highway" means all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder.

CREDIT(S)

(2008 H 562, eff. 9-23-08; 2007 H 119, eff. 9-29-07; 2006 H 241, eff. 7-1-07; 2005 H 68, eff. 6-29-05; 2002 H 675, § 1.04, eff. 1-1-04; 2002 H 675, § 1.01, eff. 3-14-03; 2002 II 545, eff. 3-19-03; 2002 S 123, eff. 1-1-04; 2000 S 317, eff. 3-22-01; 2000 S 137, eff. 5-17-00; 1998 S 187, eff. 3-18-99; 1997 S 1, eff. 10-21-97; 1996 S 285, eff. 7-1-97; 1996 H 670, eff. 12-2-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1994 H 335, eff. 12-9-94; 1994 S 82, eff. 5-4-94; 1993 H 42, eff. 2-9-94; 1992 H 536; 1991 H 77; 1990 H 669, H 88; 1988 H 708, § 1)

Chapter 4549. Motor Vehicle Crimes
Stopping Motor Vehicle

4549.02 Stopping after accident; exchange of identity and vehicle registration

(A) In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.

In the event the injured person is unable to comprehend and record the information required to be given by this section, the other driver involved in the accident or collision forthwith shall notify the nearest police authority concerning the location of the accident or collision, and the driver's name, address, and the registered number of the motor vehicle the driver was operating, and then remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance.

If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(B) Whoever violates division (A) of this section is guilty of failure to stop after an accident, a misdemeanor of the first degree. If the violation results in serious physical harm to a person, failure to stop after an accident is a felony of the fifth degree. If the violation results in the death of a person, failure to stop after an accident is a felony of the third degree. The court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(5) of section 4510.02 of the Revised Code. No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this division.

CREDIT(S)

(2003 H 50, § 4, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 130 v H 180, eff. 8-19-63; 1953 H 1; GC 12606)